

STATEMENT OF INTERESTS

Edison Schools Inc. ("Edison Schools") is a privately-held corporation that provides educational and management services to public schools, charter schools and public school districts throughout the United States. As the nation's leading provider of educational and management services to charter schools and public districts, Edison Schools serves approximately 110,000 students in more than 25 states, including Missouri.

Edison Schools' educational program is designed to raise student achievement through a research-based school design, uniquely aligned assessment systems, interactive professional development, integrated use of technology and other proven program features.

Edison Schools has a vested philosophical, ownership and pecuniary interest in the outcome of the issue before this Court: whether Westport Community Secondary Schools ("Westport") should be allowed to continue operating a public charter school in Kansas City.

Westport received its charter and began operating a public charter school in 1999. At the time Relators granted a charter to Westport, Relators understood that Westport would contract with Edison Schools to manage the day-to-day affairs of the public charter school. From the day Westport's charter school opened in the fall semester of 1999 through the end of the first semester of the 2003-04 academic year, Edison Schools operated and managed the day-to-day affairs of Westport's public charter school.

During the spring semester of 2004, Westport began operating the charter school on its own. After a few short months of Westport's unilateral operation and day-to-day management, Relators' investigation into the charter school's management structure and financial controls revealed significant and substantial problems. As a result, Relators opted not to renew their sponsorship of Westport to operate a public charter school.

In an effort to regain their charter, Westport went to the Court and recited a long list of academic achievements which purportedly established that Westport was making progress in running the public charter school. Respectfully, the accomplishments listed by Westport were almost entirely a by-product of Edison Schools' management and operation of the public charter school.

As the nation's leading provider of educational and management services to charter schools, Edison Schools has a vested interest in the health and long-term viability of the charter school system. Charter schools should therefore be operated in a manner which engenders public confidence that the citizens' money is being well-spent in funding the private entities who manage and control the nation's charter schools.

Because Edison Schools contracts with charter school boards to provide educational services, Edison Schools also has an interest in ensuring that the General Assembly's statutory guidelines governing the grant or renewal of a charter is clear in establishing proper guidelines and procedure for obtaining and renewing a charter.

In addition to its philosophical interest, Edison Schools has an ownership interest in equipment, educational resources and its proprietary academic materials located in the building currently being used by Westport to operate the charter school. Finally, Edison Schools has a financial interest in the outcome of this litigation because Westport has refused to pay Edison Schools more than \$11 million owed to Westport under the parties' operating agreement.¹

**I. RELATORS COMPLIED WITH THEIR STATUTORY
OBLIGATIONS IN DECIDING TO DENY WESTPORT'S
CHARTER APPLICATION**

Respectfully, the legal conclusions set forth in Respondent's June 25, 2004 Order Granting Preliminary Injunction are inherently contradictory. In its Conclusions of Law, Respondent cites to Mo. Rev. Stat. § 160.405 and determines that *"the procedure to be followed is the same for renewal or amendment [of a charter] as for the initial granting of a charter."* Conclusions of Law, ¶ 7 (emphasis added).² Despite recognizing that § 160.405 provides the appropriate

¹ Edison Schools' claims against Westport are the subject of a pending arbitration. Westport has filed a counter claim in that arbitration disputing Edison Schools' claim that amounts are owed.

² Factual citations to Respondent's June 25, 2004 Findings of Fact and Conclusions of Law are to either "Findings of Fact" or to the "Conclusions of

standard governing the grant or renewal of a school charter, Respondent erroneously concludes that Relators failed to provide Westport with "statutorily required process" and that Relators had no basis to deny the renewal. Conclusions of Law, ¶ 8.

Section 160.405 outlines the following procedure for obtaining a charter:

1. A person, group or organization seeking to establish a charter school shall submit the proposed charter, as provided in this section, to a sponsor. . . .

2. Proposed charters shall be subject to the following requirements:

- (1) A charter *may* be approved when the sponsor determines that the requirements of this section are met *and* determines that the applicant is sufficiently qualified to operate a charter school. The sponsor's decision shall be made within sixty days of the filing of the proposed charter;

- (2) If the charter is denied, the proposed sponsor shall notify the applicant in writing as to the reasons for its denial;

- (3) If a proposed charter is denied by a sponsor, the proposed charter *may* be submitted to the state board of education, along with the

Law" contained therein. Edison Schools has included Respondent's June 25, 2004 Findings of Fact and Conclusions of Law in its Appendix (attached).

sponsor's written reasons for its denial. If the state board determines that the applicant meets the requirements of this section and that granting a charter to the applicant would be likely to provide educational benefit to the children of the district, the state board *may* grant a charter and act as sponsor of the charter school . . .

Mo. Rev. Stat. § 160.405.1(1) and 160.405.2(1)-(3) (emphasis added).

By its express language, § 160.405.2(1) gives Relators discretion to approve (or reject) an applicant's charter after determining that an applicant has met the statutory obligations and that the applicant is "sufficiently qualified to operate a charter school." Section 160.405.2(1). Even if an applicant meets all of the statutory requirements and is sufficiently qualified, the sponsor still maintains discretion to deny the charter application (e.g., "[a] charter *may* be approved . . ."). After denying an application, the sponsor has but one statutory obligation: to "notify the applicant in writing as to the reasons for its denial." Section 160.405.2(2).

Relators complied with § 160.405's requirements. In accordance with its statutory obligation, Relator The School District of Kansas City, Missouri (the sponsor) provided Westport (the applicant) with written notice of the reasons supporting its denial within 60 days after receiving Westport's April 1, 2004 application. *See* § 160.405.2(2); *see also* Findings of Fact, ¶¶ 15, 16 and 23. Relators therefore have met all of the "statutorily required process" with respect to Westport's application. Respondent therefore erred in denying that this process

was not provided or that additional process was required. For these reasons, the opinion of the Western District Court of Appeals should be affirmed.

**II. RESPONDENT EXCEEDED ITS JURISDICTION GRANTED BY
THE MISSOURI GENERAL ASSEMBLY WHEN IT SUBSTITUTED
ITS DISCRETION FOR RELATORS' DISCRETION**

Section 160.405 does not mandate a hearing before a sponsor decides to deny a party's request for a charter. Because the Missouri General Assembly did not place a hearing requirement in § 160.405, the dispute between Westport and Relators is not a "contested case" under the Missouri Administrative Procedure Act ("APA").³ Relators' decision is therefore subject to the requirements of Mo. Rev. Stat. § 536.150 for judicial review of uncontested cases.

Section 536.150 of the APA provides that, in reviewing a decision in an uncontested case, the court:

shall not substitute its discretion for discretion legally vested in such administrative officer or body, and in cases where the granting or withholding of a privilege is committed by law to the sole discretion of such administrative officer or body, such discretion lawfully exercised shall not be disturbed.

³ Mo. Rev. Stat. § 536.010(2) defines "contested case" as "a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after a hearing."

Mo. Rev. Stat. § 536.150 (2004 edition); *see also State ex rel. Rice v. Bishop*, 858 S.W.2d 732, 736 (Mo. App. 1993).

As recognized in *State ex rel. Rice*:

The provision in § 536.150.1 that . . . "the court shall not substitute its discretion for discretion legally vested" in the administrative officer confines the judgment to "exclusively legal considerations."

It thereby takes care that the court not infringe on an authority reserved to the legislative or executive branches.

Id. (additional citations omitted).

Even though Respondent recognizes that the procedure for renewal or amendment of a charter is "the same . . . as for the initial granting of a charter," the Respondent unilaterally has determined that Westport should have been provided with process never articulated in the relevant statute. By attempting to impose an additional requirement of process, Respondent invades the province of the authority delegated by the Missouri General Assembly to the executive branch. To ensure that the legislature maintains control over the process for maintaining a charter, this Court should affirm the opinion of the Western District of Missouri Court of Appeals.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2004, I served a copy of the foregoing pleading via facsimile and first class mail (along with a copy of the brief on diskette) upon the following counsel of record:

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and served a copy via hand-delivery to:

The Honorable J.D. Williamson, Jr.
Division 11, Court of Jackson County at Kansas City Jackson County Courthouse
415 E. 12th Street
Kansas City, Missouri 64108

An Attorney for Edison Schools Inc.

CERTIFICATE REQUIRED BY MO. R. CIV. P. 84.06(C)

I hereby certify:

1. I am an attorney practicing law with the law firm of Lathrop & Gage L.C., 2345 Grand Blvd., Suite 2400, Kansas City, Missouri 64108. My telephone number is (816) 292-2000. My Missouri Bar Number is 47615.
2. I am one of the attorneys submitting a Brief Amicus Curiae on behalf of Relators.
3. The foregoing Brief complies with Supreme Court Rule 55.03 and with the limitations contained in Supreme Court Rule 84.06(b). Based upon the word-counting feature of the Microsoft Word software used to prepare this Brief, the Brief contains 1,420 words.
4. I have filed a copy of the foregoing Brief with the Court on diskette, and have served a copy of that diskette on each party. The diskettes have been scanned for virus and are virus-free.

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APPENDIX TO EDISON SCHOOLS' AMICUS CURIAE BRIEF

Order Granting Preliminary Injunction	A-1
Mo. Rev. Stat. § 160.045	A-8
Mo. Rev. Stat. § 536.150	A-12